

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 105 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

RANJIBEN CHINUBHAI

Appearance:

MR AKIL QURESHI with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income-tax
Appellate Tribunal, Ahmedabad Bench "B" has referred the
following question of law for opinion of this Court in

respect of Assessment Year 1982-83 :-

"Whether the Tribunal is right in law in holding that the capital gains is to be taxed in the hands of the trust and not in the hands of the assessee, a sole beneficiary ?"

2. The ITO included in the total income of the assessee, the capital gains of Rs.6885/- earned by the Trust of which the assessee is the beneficiary. Following the decision of the ITAT, Ahmedabad Bench "B" in ITA No. 620/Ahd/1984, the CIT(A) directed the ITO to exclude the capital gains earned by the Trust from the total income of the assessee. The Tribunal has confirmed the view taken by the CIT(A).

3. Though served, none appears on behalf of the respondent. We have heard the learned counsel for the revenue. The learned counsel for the revenue states at the Bar that the controversy raised in the present reference is answered by the Division Bench of this Court in CIT vs. Rajniben Chinubhai (Indl.) (this very assessee) in ITR No. 175/85, decided by the Hon'ble the Chief Justice and Mr Justice A.R. Dave on October 19, 2000. The Division Bench in the aforesaid case has held that the amount of capital gains should be taxed in the hands of the Trust and not in the hands of the beneficiary.

4. In view of the decision referred to above, the reference is answered in favour of the assessee and against the revenue. The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-